DOCKET NO: NNH-CV20-6105200-S	**:**	**SUPERIOR COURT**
ITALIAN-AMERICAN HERITAGE GROUP OF NEW HAVEN C/O PANE	**:**	**J. D. OF NEW HAVEN**
v.	**:**	**AT NEW HAVEN**
CITY OF NEW HAVEN	**:**	**JULY 13, 2020**

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS

Pursuant to Practice Book §§ 10-30 et seq. and 11-10, Defendant City of New Haven submits this memorandum of law in support of its 1) Motion to Dismiss for lack of Subject Matter Jurisdiction, and 2) Motion to Dismiss for lack of Personal Jurisdiction. Both Motions have been concurrently filed and both are addressed in this memorandum of law. The City's legal argument with respect to the Motion to Dismiss for lack of Subject Matter Jurisdiction is set out, in part A of Section II, and the argument with respect to the Motion to Dismiss for Lack of Personal Jurisdiction is set out in part B of Section II, infra. The Factual and Procedural Background relevant to both Motions is set out in Section I.

I. FACTUAL AND PROCEDURAL BACKGROUND RELEVANT TO BOTH MOTIONS TO DISMISS

On June 24, 2020, plaintiff filed a Summons and Complaint with the Court, as well as an Application for an Ex parte/Temporary Injunction (pleading #130.33)[1] seeking to enjoin the City of New Haven ("City") from removing a statue of Christopher Columbus from Wooster Square Park in New Haven. (Complaint, ¶10.). In doing so, it appears to have been Plaintiff's attempt to have the Court grant said request for an emergency ex parte temporary injunction without giving the City the opportunity to have its argument heard by the Court until a later date. This ex parte request, if it was the plaintiff's intention to make such request, was made improperly, with procedural insufficiencies.[2] Plaintiff's Complaint makes no claim for relief asking for an emergency ex parte injunction, only a request for a temporary or permanent injunction.

The plaintiff describes itself as a "'voluntary association'[3] made up of approximately ten thousand (10000) individuals of Italian-American descent residing in the City of New Haven and New Haven County, State of Connecticut." Plaintiff's Complaint alleges that certain of the members of its "[g]roup are descendants of Italians who immigrated to New Haven,

[1] The Application for an Ex parte/Temporary Injunction was the automated title of the document on the Court's docket website, though the document did not actually request relief in the form of an ex parte request for an injunction. Exactly what type of injunction the Plaintiff was attempting to request was, and remains, unclear.
[2] See Section II, Part B, *infra*, for further explanation.
[3] Oddly, the Plaintiff organization is not alleged to be the requisite "volunteer membership association," but a "volunteer association." Based on legal precedence this distinction is important, as explained, *infra*.

Connecticut in the late 19th Century," and that "[t]wo hundred (200) such ancestors financially contributed to the erection of a statue of the Explorer, Christopher Columbus in New Haven, Wooster Square Park ["Park"] in 1892, which was gifted to the City." (Complaint, ¶1.)

The Complaint further alleges that "[f]rom its inception, said statue has been a source of great pride to the Italian-American community in general, and to the plaintiff Group whose members view its presence as a symbol of their Italian heritage. (Complaint, ¶1.) Plaintiff alleges that the City's Board of Park Commissioners, under the City's Charter, has the authority to accept devises and gifts of property with the approval of the Board of Alders of New Haven. (Complaint, ¶¶3-4.)

Plaintiff alleges that due to "an issue [that] has arisen over the continued presence of the statue" in the Park, the City has articulated an intent to immediately remove the statue from the Park, that the intent was articulated without the approval of the New Haven "Board of Aldermen," that the City's Board of Park Commissioners unanimously voted to remove the statue in a recent meeting, and that the vote did not appear on an agenda for that meeting. (Complaint, ¶¶5-8.)

The Complaint proclaims that the removal of the statue under the procedure alleged is void, illegal, and contrary to unspecified portions of the City's Charter. (Complaint, ¶9.) Plaintiff claims that it stands to suffer "irreparable injury in that once the statue is removed, it will

"permanently disappear from the inventory of the City's parks landscape." Id. Plaintiff claims it has no adequate remedy at law and requests a temporary and permanent injunction prohibiting and restraining the City from removing the statue, and a temporary and permanent injunction prohibiting the City from removing the statue without following unspecified Charter-mandated procedures for the disposition of City-owned property. (Complaint, ¶10.) Plaintiff also requests unspecified "damages."

The Christopher Columbus statue at issue was vandalized on June 20, 2020 despite being under 24-hour police surveillance at the time. (See Affidavit of William Carone ("Carone Affidavit"), attached hereto as **Exhibit A**, ¶6.) During the days that followed, the statue appeared to be a source of growing controversy in New Haven and it became increasingly apparent that the statue would be further vandalized or defaced. (Carone Affidavit, ¶7.) After the New Haven Board of Park Commissioners recommended that the statue be removed from Wooster Square, the Acting Director of Parks, Recreation and Trees directed that the statute be carefully removed from the park. (Carone Affidavit, ¶8.)

The statue was removed from the pedestal on which it stood on June 24, 2020; it was the City's belief that had the statue not been removed from Wooster Square, it would have been subjected to further damage, similar to what has occurred in other municipalities in the region, because of the increasing contentiousness and protest concerning the statue. (Carone

Affidavit, ¶¶9-10.) The City of New Haven does not currently have any intention to dispose of the statue, and it is currently keeping the statue in a secure location in order to ensure that the statue incurs no further damage. (Carone Affidavit, ¶11.)

II. LAW AND ARGUMENT

The City's argument with respect to the Motion to Dismiss for lack of Subject Matter Jurisdiction is set out, in part A of this Section, and the argument with respect to the Motion to Dismiss for Lack of Personal Jurisdiction is set out in part B, infra.

A motion to dismiss "properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court." (Internal quotation marks omitted.) Gurliacci v. Mayer, 218 Conn. 531, 544, (1991). "The grounds which may be asserted in this motion are: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) improper venue; (4) insufficiency of process; and (5) insufficiency of service of process." Zizka v. Water Pollution Control Authority, 195 Conn. 682, 687 (1985) (citing Practice Book Section 10-31). "[O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.) Figueroa v. C&S Ball Bearing, 237 Conn. 1, 4 (1996).

Plaintiff bears the burden of proving the existence of subject matter jurisdiction, whenever and however raised. See, e.g., Fort Trumbull Conservancy, LLC v. New London, 265 Conn. 423, 430 n.12 (2003). That burden requires plaintiff "clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute . . . ." See Financial Consulting, LLC v. Commissioner of Ins., 315 Conn. 196, 226 (2015).

As for personal jurisdiction,

> the Superior Court . . . may exercise jurisdiction over a person only if that person has been properly served with process, has consented to the jurisdiction of the court or has waived any objection to the court's exercise of personal jurisdiction. [S]ervice of process on a party in accordance with the statutory requirements is a prerequisite to a court's exercise of [personal] jurisdiction over that party. Therefore, [p]roper service of process is not some mere technicality.

(Internal quotation marks omitted.) Matthews v. SBA, Inc., 149 Conn. App. 513, 529-30, 89 A.3d 938 (2014)

Section 10-33 of the Practice Book provides: "[a]ny claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action."

A. MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION : THE PLAINTIFF LACKS STANDING TO BRING THIS ACTION

"To establish standing to raise an issue for adjudication, a complainant must make a colorable claim of direct injury. Maloney v. Pac, 183 Conn. 313, 321 (1981).

> Standing is . . . a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented . . . . These two objectives are ordinarily held to have been met when a complainant makes a colorable claim of direct injury [that the complainant] has suffered or is likely to suffer, in an individual or representative capacity. Such a personal stake in the outcome of the controversy . . . provides the requisite assurance of concrete adverseness and diligent advocacy.

(Internal quotation marks omitted.) Connecticut Associated Builders & Contractors v. City of Hartford, 251 Conn. 169, 178 (1999) (citing Maloney v Pac, 183 Conn. at 321).

The plaintiff bears the burden of establishing that it has standing. Fink v. Golenbock, 238 Conn. 183, 199 (1996). In evaluating whether the plaintiff has made out a claim sufficient to establish standing, the court should properly focus "on the facts alleged in the plaintiffs' pleadings." Connecticut Associated Builders & Contractors, 251 Conn. at 191. It has been held that a court may exclude evidence that came into existence after the pleadings had been filed and yet was proffered to prove a claim made in the pleadings. Id.

The plaintiff here cannot establish standing for two reasons: (1) because it has not articulated an injury in fact, and (2) because it cannot satisfy the test for associational standing established by the Supreme Court in Hunt and adopted by the Connecticut Supreme Court in Connecticut Assn. of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 616 (1986). See also Fort Trumbull Conservancy v. City of New London, 265 Conn. 423, 434 (2003)

1. The plaintiff has no standing because it cannot articulate a legally cognizable injury.

It is well-settled law that a legally cognizable injury is a prerequisite to establish standing. Plaintiffs must have a "legally protectable interest in the litigation," which exists if the plaintiff is directly and adversely affected by the action in question or if the plaintiff's interest is conferred by statute. 59 Am. Jur. 2d Parties § 31

> A plaintiff that claims standing to pursue a cause of action must satisfy a two-part standard. First, the party claiming [standing] must successfully demonstrate a specific personal and legal interest in the subject matter of the decision . . . . Second, the party claiming [standing] must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision . . . . Med-Trans of Connecticut, Inc. v. Dept. of Public Health & Addiction Services, 242 Conn. 152, 158-59, 699 A.2d 142 (1997).

(Internal citations omitted.) Connecticut Post v. South Cent. Conn. Reg'l Council of Gov'ts, 60 Conn. App. 21, 27, (overruled in part on other grounds) (finding that a claim of unfair

competition is not sufficient to confer standing). This is the aggrievement requirement that must be shown and proven by the plaintiff. Id. "[A]ggrievement requires a two part showing. First, a party must demonstrate a specific, personal and legal interest in the subject matter of the [controversy], as opposed to a general interest that all members of the community share. . . . Second, the party must also show that the [alleged conduct] has specially and injuriously affected that specific personal or legal interest." Fort Trumbull Conservancy v. City of New London, 265 Conn. 423, 430 (2003).

The only deprivation alleged by the plaintiff is that "once the statue is removed, it will permanently disappear from the inventory of the City's parks landscape." Plaintiff's complaint is devoid of any assertion of a legally protected right or interest in the maintenance of the statue in the park, other than a reference to the statue which the "Italian-American community in general" views as a source of pride, and which members of the plaintiff view as a symbol of their Italian heritage. This does not allege a cognizable loss—there is no judicially recognized right to recover for loss of pride or of the opportunity to be reminded of one's heritage. See, e.g., Piccininni v. Hajus, 180 Conn. 369, 373 (1980); Ellison v. St. Raphael Dialysis Center Partnership, 2015 Conn. Super. LEXIS 1554, at *4-5 (Pittman, J., June 3, 2015) (this and all unreported cases are attached hereto as **Exhibit E**). A claim that a plaintiff's "dignity pride and honor" were affected by Puerto Rico's colonial status was found to be an "abstract

psychological injury, without any demonstration of a personal, cognizable injury to Plaintiff arising as a consequence of Defendants' actions" and therefore did not constitute an injury-in-fact under Article III. Orta Rivera v. Cong. of U.S. of Am., 338 F. Supp. 2d 272, 277 (D.P.R. 2004).

The plaintiff attempts to establish a cognizable injury from the allegation that some the unnamed members are ancestors of some unnamed donors who gave funds towards the creation of the statue. Even assuming that the plaintiff could show that the statue may have been a gift to the City from some ancestor of some member or members, there is no claim raised in the pleadings sufficient to give the plaintiff a legal interest that is injured by the City's decision to remove the statue from the park.

The loss the opportunity to view a statue, an affront to the pride of its members, is the only articulable loss to the plaintiff that may be inferred from the pleadings. This falls far short of constituting any legally protected interest that the association stands to suffer. "Aggrievement does not demand certainty, only the possibility of an adverse effect on a legally protected interest . . . ." Fort Trumbull Conservancy, LLC v. Alves, 262 Conn. 480, 487 (2003). Here the plaintiff does not come within the ambit of even the possibility of a legal injury arising from the City's action.

Without a legally cognizable injury or infringement on a legally protected interest, the plaintiff is not aggrieved and therefore lacks standing to pursue this action. Furthermore, the "injury" is also speculative inasmuch as the City maintains ownership of the statue and is currently protecting it from further vandalism, unless, of course, the plaintiff would prefer to see it still in the park, even in a defaced condition.[4] While the Plaintiff claims that the loss will be irreparable, nowhere in the Complaint does the plaintiff allege that the City has divested, or plans to divest, itself of ownership of the statue; rather Plaintiff's claims are directed only to the City's expressed intent to remove the statue from the Park.

It should be noted that the plaintiff does not claim any right of action pursuant to any statutory or charter violation.

> Although the United States Supreme Court has in recent years greatly expanded the concept of standing . . . it has recently held that where a party does not rely upon any specific statute authorizing invocation of the judicial process [his/her] standing depends on whether [he/she] has a sufficient personal stake in the outcome of the controversy and *[he/she] is not entitled to vindicate [his/her] own value preferences through the judicial process*. Sierra Club v. Morton, 405 U.S. 727, 731-40, 92 S. Ct. 1361, 31 L. Ed. 2d 636. See Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343.

(Emphasis added.) Belford v. New Haven, 170 Conn. 46, 54 (1975) (overruled on other grounds).

[4] In June 2020, Boston removed its Christopher Columbus statue after it had been beheaded and defaced with paint. On or about July 4, 2020, the Christopher Columbus statue in Waterbury, Connecticut was beheaded, and

In lawsuits concerning the removal of statues, courts in other jurisdictions have addressed the issue of aggrievement and found that there was no standing in similar circumstances. A Texas Court of Appeals, noting that the plaintiff is required to plead and prove that "they have suffered a particularized injury distinct from the general public," held that the individual and association plaintiffs lacked standing because they failed to allege injuries to the "status quo" and that a purported family interest in the history behind a gifted statue donated by an ancestor when a state university president announced the removal of a confederate statue, in Bray and Texas Division, Sons of Confederate Veterans, Inc and Littlefield v. Fenves, 2016 Tex. App. LEXIS 5366, Court of Appeals, Texas, March 24, 2016, *21-22.

In an action claiming a First Amendment violation and several Texas state law claims, a U.S. District Court for the Western District of Texas, Austin Division, observing that "subjective ideological interests—no matter how deeply felt—are not enough to confer standing," found that plaintiffs lacked individual and associational standing. McMahon Littlefield and Texas Division, Sons of Confederate Veterans, Inc. v. Fenves, 323 F. Supp. 3d, 874, 879-881 (2018) (citing Sierra Club v. Morton, 405 U.S. 727, 729-35 (1972)). Plaintiffs in McMahon—individuals and a representative association—sought an injunction and declaratory relief to prevent the

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the Christopher Columbus statue in Baltimore, Maryland was toppled and thrown into the City's inner harbor. See

removal of certain statues. Id. at 877-878. Plaintiffs claimed an injury that was distinct from any effect on the general public because of their "unique ties through familial veterans' service to the dissenting political viewpoint expressed in the statues" awaiting removal. Id. at 879. The court found that a general action taken by the defendant to remove an inanimate object, which bears no relation to the plaintiff other than a shared ideological interest that the plaintiff and potentially others of the general public may share, is not an action taken directly against the plaintiff. Id. at 879-881; see also Brewer v. Nirenberg, 2018 U.S. Dist. LEXIS 231679 (U.S. District Court for the Western District of Texas, San Antonio Division) (Ezra, J., Sept. 17, 2018), (finding no standing because, inter alia, plaintiffs' identities as descendants of Confederate veterans does not transform an abstract ideological interest in preserving the Confederate legacy into a particularized injury; the law prevents judicial review at the behest of organizations who seek to do no more than vindicate value preferences, citing Sierra Club v. Morton, 405 U.S. at 740, 92 S.Ct. 1361). The alleged affront to the pride of the plaintiff and the missed opportunity to view the statue in the Park simply do not rise to the level of a legal injury sufficient to invoke the jurisdiction of this court.

Exhibit B, newspaper articles.

2. The plaintiff, as a "voluntary association," cannot satisfy all three elements necessary for associational standing to sue as required by the test adopted in *Hunt v. Washington State Apple Advertising Commission*.

It is the plaintiff's burden to establish standing. See Fink v. Golenbock, 238 Conn. 183, 199 n.13 (1996). Seymour v. Region One Bd. of Educ., 274 Conn. 92, 104, cert. denied, 546 U.S. 1016 (2005). Here, the plaintiff, not a person or a corporation, describes itself as "'a voluntary association' made up of approximately ten thousand individuals (10000) residing in the City of New Haven and New Haven County." As a voluntary association, plaintiff must satisfy the Court that it has standing, that is, that it is the proper party to bring suit. "The question of standing of an organization turns on whether the organization's activities in pursuit of its mission have been affected in a sufficiently specific manner as to warrant judicial intervention, which requires a showing that the defendant's unlawful actions have caused a concrete and demonstrable injury to the organization's activities with the consequent drain on the organization's resources, requiring a diversion of its resources to counteract the effects of another's acts. An organization's mere interest in a problem or its opposition to an unlawful practice is not sufficient to demonstrate injury-in-fact, as element of standing, nor is a simple setback to an organization's abstract social interests." 6 Am. Jur. 2d Associations and Clubs § 33.

In evaluating the standing of an association, the Connecticut Supreme Court has adopted the federal test for associational standing articulated in Hunt v. Washington State Apple Advertising Commission, 432 U.S. 333, 343 (1977). Fort Trumbull Conservancy v. City of New London, 265 Conn. 423, 434 (2003). Under the Hunt test,

> an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Id. at 434. All three elements of the test must be satisfied for a plaintiff association to have standing and invoke the jurisdiction of the court.

Application of this test to the plaintiff's allegations in the complaint and application for temporary and permanent injunction inexorably leads to the conclusion that the plaintiff association has no standing to sue as it does not satisfy any of the 3 elements of the Hunt test.

a. None of its members would have standing to bring the action in his/her own right.

Plaintiff makes a vague, unsubstantiated claim that certain members of its association are descendants of Italians who immigrated to New Haven in the late 19th Century and that "[t]wo hundred (200) such ancestors financially contributed to the erection of a statue of the Explorer, Christopher Columbus in New Haven, Wooster Square Park in 1892, which was gifted to the City." Plaintiff fails to specify how many of its members are actual descendants of

the unidentified donors who, some 118 years ago, contributed some unspecified amount of funds toward the erection of the statue. Plaintiff further characterizes the statue as a "source of great pride to the Italian-American community in general, and to the plaintiff group whose members view its presence as a "symbol of their Italian heritage." It should be noted that the plaintiff itself does not claim to have been a donor of the gift, nor does it assert that any of its "members" were donors of the gift to the city.

These pleadings do not specifically allege that any member of the association is an actual descendant of any of the alleged donors to the statue. Even if there were some legally compensable loss arising from a member's status as a descendant of one of the "200 ancestors," no member is identified as falling into this category. Absent an allegation that the so-titled "members" of the organization were themselves donors who maintained some control over the gifted statue, the association lacks standing to pursue a claim based upon some injury related to the loss inherited from the donative ancestor, if indeed the descendent member actually inherited some cognizable claim from his or her ancestor-donor.

To compound the plaintiff's problem, it alleges that the statue was a gift, which, by definition, must have been conveyed to the City with no obligation on the City's part that would create any legal duty or obligation to the donors, much less to their descendants. The only alleged beneficiary of the gift is the City of New Haven, and there are no allegations that the

gift was subject to any conditions that would give anyone any ability to control the whereabouts of the statue 118 years later.

"A gift is the transfer of property without consideration. It requires two things: a delivery of the possession of the property to the donee, and an intent that the title thereto shall pass immediately to him. This is a gift *inter vivos.* In such a gift the donee takes an absolute, indefeasible title." Guinan's Appeal, 70 Conn. 342, 347, 39 A. 482 (1898); see also Kriedel v. Krampitz, 137 Conn. 532, 535 (1951). In McKennan v. Connecticut Dept. of Social Services, 2006 Conn. Super. LEXIS 1046, at *5 (Taylor, J., Apr. 6, 2006), a 2006 Superior Court case citing Guinan, the court noted that the Defendant Connecticut Department of Social Services defined "gift" the using Black's Law Dictionary (5th Ed.) definition: "[a] voluntary transfer of property to another made gratuitously and without consideration . . . Essential requisites of "gift" are capacity of donor, intention of donor to make gift, completed delivery to or for the donee, and acceptance of gift by donee."

"At common law, ***a donor*** who has made a completed charitable contribution, whether as an absolute gift or in trust, had no standing to bring an action to enforce the terms of his or her gift or trust unless he or she had expressly reserved the right to do so." Carl J. Herzog Foundation v. University of Bridgeport, 243 Conn. 1, 5-6 (1997) (Emphasis added). There is no allegation of any reservation of rights to any donor here. More importantly, the "members"

of the plaintiff association are not alleged to be the donor or donors of the gift. As a result, there can be no standing springing from the relationship of the donors' ancestors that would then have been passed down to the association.

Because there is no demonstrable aggrievement by any one of its individual members (as discussed, *supra*, and also see Section A.1. of this Motion to Dismiss for Lack of Subject Matter Jurisdiction), the association itself lacks standing to sue on their behalf.

b. The interests the plaintiff association seeks to protect are not germane to its organizational purpose.

The Italian American Heritage Group, in its pleadings, appears to be nothing more than a group of individuals proclaimed to be associated together by Louis Pane, the only identified member in the pleadings, and founder (see Pane affidavit). Plaintiff is not registered with the Secretary of the State.[5] The pleadings are devoid of any statement of the plaintiff's organizational purpose. To even attempt to do an analysis of whether the interests sought to be protected by this lawsuit are germane to the organization's purpose is impossible, and therefore the plaintiff has failed to meet its burden of showing that the interests it seeks to protect are related to its purpose. Plaintiff cannot satisfy the second prong of the Hunt test.

[5] See **Exhibit C**, search results from Connecticut Secretary of State, Business Inquiry Website for search term "Italian American*" (first page (showing search term) and entire results included).

Additionally, this Group does not qualify as a traditional voluntary membership organization entitled to standing. There are no determinable members. To qualify as an organization with "members," plaintiff must allege and prove that its constituents have an institutional voice in how those principles are determined or maintained. Student Members of SAME v. Rumsfeld, 321 F. Supp. 2d 388, 394 (2004) (Hall, J.). Simply because members may choose to "opt into" the organization because of its principles does not make them members, but merely patrons, or "followers". Id. "Where an association is not a traditional voluntary membership organization, its constituents *must nevertheless* possess sufficient "indicia of membership." (Emphasis added.) Mental Hygiene Legal Service v. Cuomo, 609 F. App'x 693, 695 (2d Cir. 2015) (citing Hunt v. Washington State Apple Advertising Commission, 432 U. S. 333 (1997)).

In Hunt, the U.S. Supreme Court considered that the association, a state agency established to advance the business interests of Washington State apple growers and dealers, had standing to assert the claims of its members because it performed the functions of a traditional trade association. While the court noted that the apple growers were not "members" of a traditional trade association, they possessed all the indicia of organization membership such as the election of members to serve on the Commission, and financed activities to advance the common business interests of its members. Hunt v. Washington State Apple

Advert. Comm'n, 432 U.S. 333, 334 (1977). The Hunt court determined that the plaintiff organization, represented its constituents' interests and provided a means for members to express their collective views, such that there was representation and control in how those views were expressed. See Disability Advocates, Inc. v. New York Coalition for Quality Assisted Living, Inc., 675 F.3d 149, 157-59 (2d Cir. 2012) ([T]he purpose of the Hunt inquiry is to determine whether an organization provides its members with the means to express their collective views and protect their collective interests.").

The alleged constituent members here have not shown any "indicia of membership" in the Italian-American Heritage Group for the group to provide them "the means by which they express their collective views and protect their collective interests." See Mental Hygiene Legal Service v. Cuomo, 609 F. App'x 693, 695 (2d Cir. 2015) (quoting Hunt v. Washington State and holding that there was insufficient evidence to show that the membership had a means of expressing their collective will.)

In the present matter, plaintiff has not plead any discernable purpose or proof that the organization even truly exists in an "organized sense," much less that it has members who have a means to express their collective views or control how those interests are projected as an organization. It does not appear to have any other determinable existence aside from this lawsuit, and does not have any organizational filings on the Connecticut Secretary of State's

website.[6] Based on the pleadings, the court cannot make the necessary determination of whether the interests it seeks to protect with this lawsuit are germane to its organizational purpose. Without information as to the collective views and interests of the alleged 10,000 members of the group, and the manner in which the members express and control that expression of views, there can be no determination that the interests of the group are germane to, or are otherwise served by, its efforts to keep the statue on display in the public park, even if the statue is vulnerable to further defacement and/or destruction by remaining in the park.

The plaintiff association's insufficiency in establishing that it is a membership organization, begs the question as to whether it can establish any legal existence that would confer subject matter jurisdiction. In America's Wholesale Lender v. Pagano, 87 Conn. App. 474, 477, 866 A.2d 698 (2005), the Appellate Court applied its holding to trade names in the following language, with the following result: "[t]he defendant argues that because [the plaintiff] initiated suit solely in its trade name, which is a fictitious name and not a legal entity, [the plaintiff] lacked standing and, consequently, the court lacked subject matter jurisdiction to decide the merits of [the plaintiff]'s claim. We agree."

Based on the evidence before the court, the plaintiff cannot satisfy the second requirement of Hunt.

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[6] See footnote 6, referencing **Exhibit C**, *supra*.

c. The plaintiff cannot prosecute the lawsuit without the participation of its members.

If plaintiff were to demonstrate that some legally cognizable, irreparable harm would result to any one of its individual members from the removal of the statue, it could only do so with the participation of some member of the association, who must present evidence of his/her prospective injury. The plaintiff in its pleadings differentiates between those members who are descendants of the contributing ancestors and those who are not. Therefore, not all its members stand on the same footing in relation to the statue, even if the descendants of the contributing ancestors had some legal interest as the result of the donation made 118 years ago. The matter cannot proceed upon presumptions and suppositions. Because of this inescapable necessity, the third requirement of the Hunt analysis fails. For this reason as well, plaintiff lacks standing to pursue this action.

In Fairchild Heights Residents Association v. Fairchild Heights, 131 Conn. App. 567, 582-84 (2011), the Connecticut Appellate Court found that plaintiff lacked standing to file a CUTPA claim because in order to prove the alleged violations and resulting damage, the individual members "would have [had] to testify as to their first hand knowledge of such violations and how they were damaged," and therefore that the plaintiff could not "satisfy the third prong of the standing test . . . because the claims of damage it alleged require the participation of its individual members." Fairchild Heights Residents Association v. Fairchild

Heights, 131 Conn. App. 567, 582-84 (2011).[7] Here where the plaintiff association claims the statue is a source of pride that would be adversely affected by its removal from the park, or perhaps some ancestral wish, prosecution of this claim would require that some individual member testify in order to establish a cognizable legal interest stemming from his/her own personal pride, heritage, or other ancestral desires (as an alleged descendant of those who donated funds for the statue in 1892). Because such an evidentiary showing would be necessary to prove these points, the plaintiff association does not have standing to bring these claims.

Also, the resulting harm is speculative in that there is no allegation that the City has divested itself of ownership of the statue; it is maintaining it in a secure location to protect it from further vandalism.[8]

B. MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION: THE CITY HAS NOT BEEN SERVED AS REQUIRED BY LAW

Section 52-45a, governing process, provides: "Civil actions shall be commenced by legal process consisting of a writ of summons or attachment, describing the parties, the court

[7] The "standing test" referred to was the Hunt standard: "an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." (Internal quotation marks omitted.) Fairchild Heights Residents Assn. v. Fairchild Heights, Inc., 131 Conn. App. 567, 583, (2011) (citing Connecticut Assn. of Health Care Facilities, Inc. v. Worrell, 199 Conn. 609, 616 (1986)).

[8] See Exhibit A, Carone Affidavit, ¶11.

to which it is returnable, the return day, the date and place for the filing of an appearance and information required by the Office of the Chief Court Administrator. The writ shall be accompanied by the plaintiff's complaint. The writ may run into any judicial district and shall be signed by a commissioner of the Superior Court or a judge or clerk of the court to which it is returnable." Fenyes v. Fracker, 2010 Conn. Super. LEXIS 513, at *7 (Levin, J., Jan. 23, 2010) (concerning an application for a temporary injunction).

"A defect in process . . . such as an improperly executed writ, implicates personal jurisdiction . . . . Unless the issue of personal jurisdiction is raised by a timely motion to dismiss, any challenge to the court's personal jurisdiction over the defendant is lost." (Citation omitted; internal quotation marks omitted.) Rock Rimmon Grange # 142, Inc. v. The Bible Speaks Ministries, Inc., 92 Conn. App. 410, 415-16 (2005), aff'd, 112 Conn. App. 1 (2009).

The Court's instructions to attorneys seeking to file a Temporary Injunction requires that counsel complete service according to Sections 10-12c and 10-13 of the Connecticut Practice Book. See *Temporary Injunction – Revised 07/01/2018*, attached hereto as **Exhibit D**; last viewed at https://jud.ct.gov/CivilProc/Tempinj.pdf on July 9,2020. Section 10-12c of the Practice Book states "[a]ny pleading asserting new or additional claims for relief against parties who have not appeared or who have been defaulted shall be served on such parties." Section 10-13 describes proper methods of service "except service pursuant to Section 10-12c" and

does not exempt the service requirements of Section 10-12c. Process upon a city in civil actions must be served upon its clerk or assistant clerk or upon its mayor or manager. Conn. Gen. Stat. Sec. 52-57(b).

The City of New Haven has not been served with legal process in this matter.[9] While proper process has heretofore been impossible for plaintiff to serve based upon the fact that, as of the date of the filing of this Motion, the court has not issued an Order to Show Cause, the City does not concede that the Court has personal jurisdiction by virtue of entering its appearance and filing this motion, and it maintains that the Court lacks personal jurisdiction over the City because it has not been properly served. Despite not having been served with process, the City is filing this motion to enable subject matter jurisdiction review in light of the serial Motions for Order that have been filed after plaintiff filed its application for injunction on June 24, 2020. Since the City has not received service of process to date, it reserves its right to further contest personal jurisdiction as necessary as related to the plaintiff's filings to date, or any service that may be made in the future.

[9] While the application nominally indicates an intent to request an ex parte injunction, such relief was not requested in the Complaint, and plaintiff's Proposed Order, while titled "Temporary/Ex Parte" on the Court's docket (document 100.33), only contemplates a temporary injunction being issued after a hearing, in its body. The Office of the Corporation Counsel received a copy of the application for Injunction; however, because the action is functionally an application for a temporary injunction after a hearing, service pursuant to Practice Book § 10-12c is necessary. See Exhibit D.

III. CONCLUSION

The City's Motion to Dismiss for lack of subject matter jurisdiction should be granted. The plaintiff's complaint fails to set forth the requisites to establish standing. "Of course, pleadings must be something more than an ingenious academic exercise in the conceivable." Warth v. Seldin, 422 U.S. 490, 509 (1975) (quoting United States v. SCRAP, 412 U.S. 669, 688 (1973)). Plaintiff lacks standing because it does not stand to suffer a legally cognizable injury. Plaintiff further lacks standing because it fails to satisfy the three-prong test of *Hunt*, and the failure to satisfy any one of the three elements is alone fatal to plaintiff's subject matter jurisdiction. None of its individual members would have standing to sue in his/her own right; the interests served by this lawsuit are not germane to the organization's purpose; and the claim asserted and relief requested requires the participation of the individual members of the association.

In addition, the Court lacks personal jurisdiction because the defendant has not been properly served, therefore the Motion to Dismiss for lack of personal jurisdiction should be granted.

Accordingly, this Court lacks both subject matter and personal jurisdiction in this matter and the action should be dismissed, and both motions should be granted.

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C E R T I F I C A T I O N

This is to certify that a copy of the foregoing Memorandum of Law was mailed, postage prepaid on this 13th day of July, 2020 to the following pro se party:

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